

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5159 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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NAJABAI, WD/O SORABJI RUSTOMJI

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR (ULC)

Appearance:

MR MC BHATT for Petitioners
MR DP JOSHI, AGP for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/12/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr DP Joshi, learned AGP for the respondents.

The petitioners have challenged impugned order Annexure "B" dated 30.9.1988 passed by the Competent Authority and the impugned order Annexure "C" dated 19.8.1994 passed by the learned Urban Land Tribunal in the appeal filed by the petitioner and also all the consequential proceedings under Secs. 10(1), 10(2) and

10(3) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the ULC Act").

It is the case of the petitioners that they are the owners and occupiers of certain pieces of land in question which are used for the purpose of agriculture. The petitioners submitted Form No. I under Sec. 6 of the ULC Act. The Competent Authority held the entire land as excess vacant land. This order of the Competent Authority which is under challenge came to be confirmed by the Urban Land Tribunal. Explaining the delay in filing this petition, the petitioners have subjected to challenge the aforesaid orders in this petition under Article 226/227 of the Constitution of India.

The respondents have filed affidavit in reply, inter alia, contending that the portion of the land in question has been reserved under the Town Planning Scheme which has now been framed. The respondents have also made grievance about non-supply of the copy of the power of attorney.

I have heard the learned advocate appearing for the petitioners and Mr DP Joshi, learned AGP for the respondents. As can be seen from the facts stated in the petition as also in the impugned order of the Competent Authority, the land in question bearing Survey Nos. 25 and 26 has been described as agricultural land and the use thereof is also shown to be agricultural. It has been the submission of Mr Bhatt that this fact has been overlooked by the authorities below in the context of the decision of the Hon'ble Supreme Court in the case of Atia Mohammadi Begum vs. State of U.P., AIR 1993 SC 2465. It has also been submitted on behalf of the petitioners that on the relevant date i.e. on 17.2.1996 there was no Town Planning Scheme and, therefore, on that date the Competent Authority ought to have taken into consideration the user of the land as set out in the impugned order Annexure "B". This Court would not enter into the merits with regard to the facts of the case, more particularly with regard to the user thereof. However, since it prima facie appears that the user was shown to be that of agriculture, bearing in mind the aforesaid decision of the Hon'ble Supreme Court, the Competent Authority is required to consider the petitioners' case from that stand point after hearing the petitioners.

The grievance with regard to supplying copy of power of attorney has been resolved and a copy of the power of attorney has been supplied to the learned AGP

for the respondents. One copy is also permitted to be placed on record of this petition. Rest of the contentions taken by the respondents in the affidavit in reply can be dealt with by the Competent Authority and appropriate decision might be taken after hearing the petitioners.

Hence, in the facts of the case, following direction is issued :-

"The petition is allowed. The impugned orders Annexures "B" and "C" are hereby set aside. The matter shall stand remanded to the Competent Authority for considering the same afresh and deciding in accordance with law after hearing the petitioners under Sec.8/9 of the ULC Act."

It would be open to the petitioners to canvass all available contentions. It will also be open to the Government to deal with the questions which are sought to be agitated in the affidavit in reply.

Rule is made absolute in the aforesaid terms. No order as to costs.

Sd/-

December 21, 1998 (M.S. Parikh, J.)

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